deed of the land has priority over a previously recorded judgment lien against the vendee. *Scott, Carhart & Co.* v. *Warren*, 21 Ga. 408. Likewise it is superior to a mechanic's lien and even to a prior recorded mortgage for part of the purchase price. *Clark* v. *Butler*, 32 N. J. Eq. 664; *Rogers* v. *Tucker*, 94 Mo. 346. And the right of dower and homestead rights are subject to such mortgage. *Mayburry* v. *Brien*, 15 Pet. (U. S.) 21 ; *Roby* v. *Bismarck Natl. Bank*, 4 N. D. 156. This rule of priority has been extended to cases where the mortgage is to a third party. *Haywood* v. *Nooney*, 3 Barb. (N. Y.) 643. Nor does it matter that the mortgage is for a part only of the purchase price. *Courson* v. *Walker*, 94 Ga. 175. The theory usually advanced by the courts, that the liens cannot attach to such an instantaneous seisin, seems a fiction. For the rule applies even though there is an interval between the deeds, provided they all constitute one transaction. *Stewart* v. *Smith*, 36 Minn. 82. And no priority is given a mortgage simultaneously executed to secure debts other than the purchase money. *Van Loben Sels* v. *Bunnell* 120 Cal. 680. The true theory would seem to be that, owing to the vendor's equity, the vendee is at no time beneficially seised of the land. See *N. J. Building, etc., Co.* v. *Bachelor*, 54 N. J. Eq. 600.

MUNICIPAL CORPORATIONS — ACTIONS BY AND AGAINST MUNICIPAL CORPORATIONS — CITY IN MORE THAN ONE COUNTY. — The New York Code makes jurisdiction over domestic corporations dependent upon residence. *Held*, that New York City, whose principal offices are in New York County, is not subject to suit in the Kings County courts. *Maisch* v. *City of New York*, 40 N. Y. L. J. 1097 (N. Y., Ct. App., Dec. 1, 1908).

It is generally held that a city may, even in transitory actions, be sued only in the county that includes it. *Oil City* v. *McAboy*, 74 Pa. 249. This rule may rest on the principle either that a city should be sued at its place or places of residence, or that it should be subject to suit in one place only. The latter reasoning would clearly justify the holding in the principal case. But granting that residence is the basis of the rule, it seems that the same result is reached. For it has been held that a city in several counties is a resident of that only which contains its principal offices. *Fostoria* v. *Fox*, 60 Oh. St. 340. In many jurisdictions a railroad is, indeed, subjected to suit as a resident in every county traversed. *Baldwin* v. *Mississippi, etc., R. R. Co.*, 5 Clarke (Ia.) 518. *Contra, Thorn* v. *Central R. R. Co.*, 26 N. J. L. 121. But practical reasons of convenience would seem to make such cases distinguishable from the one under consideration. At any rate, as the New York Code defines a corporation's residence as its principal place of business, the result in the present case is inevitable.

MUNICIPAL CORPORATIONS — TERRITORIAL LIMITS AND SUBDIVISIONS — POWER OF LEGISLATURE TO ANNEX TERRITORY. — An act of the state legislature enlarged the limits of a city without the consent of the owners of the annexed territory, thereby subjecting the land to the burden of a previously incurred indebtedness. An owner sought to restrain the city from collecting taxes on the annexed territory. *Held*, that an injunction will not issue. *Lutterloh* v. *City of Fayetteville*, 62 S. E. 759 (N. C.).

The creation of municipal corporations or the extension of their boundaries is a legislative act, and, as such, is not subject to review by the courts unless some constitutional privilege is violated. *City of Galesburg* v. *Hawkinson*, 75 Ill. 152. When the power of taxation, usually delegated to the municipality, imposes a burden on land, which from its use or situation does not receive any benefit, some courts have intervened. Such taxation is held a deprivation of property without due process of law. *Vestal* v. *City of Little Rock*, 54 Ark. 321. And under territorial jurisdiction it is considered a taking of property for public use without just compensation. *People* v. *Daniels*, 6 Utah 288. But the weight of authority is against this view. *Bailey* v. *Manasquan*, 53 N. J. L. 162. Taxation is not confiscation, even though the burden is not generally uniform; and methods of taxation fixed by the legislature cannot be rearranged

by the courts. The liability of newly annexed territory for pre-existing indebtedness involves the same idea, and the annexing statute is not unconstitutional. *Hollis* v. *City of Rochester*, 41 N. Y. Misc. 559. However, the annexation of outlying lands for the sole purpose of taxation seems confiscation; accordingly, the annexation of non-contiguous land is generally held void. *Chicago & Northwestern R. R. Co.* v. *Town of Oconto*, 50 Wis. 189.

PATENTS — RECOVERY FOR INFRINGEMENT AFTER PATENT ANNULLED. — A patentee sued for infringement and obtained an injunction and a writ of inquiry as to damages. Then the defendant in a separate proceeding had the patent annulled. *Held*, that the defendant is estopped by the judgment in the first proceeding from denying at the inquiry the validity of the patent. *Poulton* v. *Adjustable Cover, etc., Co.*, 99 L. T. R. 647 (Eng., Ct. App., July 3, 1908).

It is doubtful whether the decree in the first proceeding is a final judgment. See *McGourkey* v. *Toledo & Ohio Ry.*, 146 U. S. 536, 545. Even if it is final, yet the subsequent judgment revoking the patent creates an estoppel on an estoppel and therefore the question is left open. *Shaw* v. *Broadburt*, 129 N.Y. 114. In either case the doctrine of *res judicata* is inapplicable. But the result in the principal case may rest on another ground. A master cannot go behind the order under which the reference is made: he must accept it as conclusive of all matters embraced therein. See *Gilmore* v. *Gilmore*, 40 Me. 50. Where, as here, the sole question referred to the master is the amount of damages caused by the defendant's infringement, no issue is raised as to the validity of the patent. Evidence on that point is thus excluded at the inquiry, not because it is *res judicata* but because it is irrelevant. The intervening order of revocation is therefore improperly set up at the inquiry into damages. It is available, if at all, only in arresting the final judgment awarding damages.

PUBLIC SERVICE COMPANIES — RIGHTS AND DUTIES — RIGHT OF WITHDRAWAL FROM SERVICE. — Certain ferries were established by the city of New York pursuant to authority granted by charter and franchise. These ferry privileges were leased to a private corporation, whose sublessee threatened to discontinue the operation of the ferries. A citizen applied for a writ of mandamus against the city of New York. *Held*, that the acceptance of the franchises imposes a duty to continue in the operation of the service, the performance of which is enforceable by mandamus. *In the matter of Wheeler*, 40 N. Y. L. J. 1117 (Sup. Ct., Dec. 1908). See NOTES, p. 367.

RECEIVERS — RECEIVERS' CERTIFICATES — RIGHT TO ISSUE IN PRIVATE CORPORATIONS. — A receiver of an insolvent private corporation composed of eighteen mills applied to a court of equity for permission to issue certificates to provide a fund for the paying for the installment on the bonded indebtedness on one of the mills which was subject to immediate foreclosure in case of default; such certificates to become a lien on all the other mills prior to that of the subsisting mortgage. *Held*, that the certificates may be issued, on the ground that such a course is necessary for the preservation of the property. *Lockport Felt Co.* v. *United Box Board & Paper Co.*, 70 Atl. 980 (N. J. Eq.). See NOTES, p. 373.

SALES — CONDITIONAL SALES — BAILMENT WITH OPTION TO BUY DISTINGUISHED FROM CONDITIONAL SALE. — The owner of furniture let it on hire, the hirer paying a lump sum in consideration of an option to purchase, and agreeing to pay a monthly rent. By the agreement, the hirer could terminate the bailment by giving a week's notice and returning the goods. Should he avail himself of the option to buy, all payments for the option and for rent were to be credited on the purchase price. The hirer being in arrear with the rent, the owner retook the goods. *Held*, that the owner has not abandoned his right to sue for the arrears in rent. *Brooks* v. *Bernstein*, [1909] 1 K. B. 98.

Where the vendee under a contract of conditional sale defaults in payment,